

Congress of the United States

Washington, DC 20515

February 11, 1999

The Honorable Donna E. Shalala
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Madam Secretary:

Last month the General Counsel at HHS, Harriet Rabb, issued a memorandum to Dr. Harold Varmus, Director of the National Institutes of Health (NIH), supporting the claim that taxpayer funds may be used for research on stem cells taken from living human embryos. Shortly thereafter, and using the Rabb memo as a basis, Dr. Varmus announced that NIH will reverse current federal policy and begin funding research which relies on the mutilation and destruction of human embryos.

We wish to express to you, in the strongest possible terms, our objection to Ms. Rabb's memo and to Dr. Varmus's decision. Any NIH action to initiate funding of such research would violate both the letter and spirit of the federal law banning federal support for research in which human embryos are harmed or destroyed.¹ Rather than providing guidance on how best to implement the law that Congress passed and the President signed, the memorandum appears to be a carefully worded effort to justify transgressing that law.

In her memorandum Ms. Rabb makes significant errors on the way to her conclusion that it would be permissible for NIH to fund research using stem cells harvested from human embryos. We call upon you to correct the General Counsel's interpretation and to reverse Dr. Varmus's decision.

¹ Since January 1996, Congress has included in the annual Labor, Health and Human Services, Education Appropriations Act a section prohibiting funding for this type of research. Section 511 of the most recently enacted research funding bill, Public Law 105-277, provides (in part) that--

- (a) None of the funds made available in this Act may be used for--
 - (1) the creation of a human embryo or embryos for research purposes; or
 - (2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under CFR 46.208(a)(2) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

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At the start of her analysis, the General Counsel unilaterally narrows the meaning of "research in which a human embryo or embryos are destroyed" and states that it prohibits only direct federal funding of the specific act of destroying the embryo. In this way she limits the scope of the law passed by Congress. While the act of destroying or injuring an embryo would certainly be ineligible for Federal funding, the law has a broader application. It also bars the use of tax dollars to fund research which follows or depends upon the destruction of or injury to a human embryo.

Congress could have structured paragraph (2) of subsection (a) of the law like paragraph (1) and simply prohibited the use of funds for the destruction or discarding of human embryos. We did not do that, and by established rules of statutory construction, IHS may not construe the law's provision on "research in which" embryos are destroyed as narrowly as its provision on the creation of embryos.² Instead, we prohibited the funding of research projects in which the lethal dissection or harmful manipulation of living human embryos is a necessary prerequisite, including projects where the material used in the experiments is obtained by destruction of an embryo that would not otherwise be done (or not otherwise done in the same way). In congressional testimony, Dr. Varmus has confirmed that it is impossible to obtain stem cells from embryos for these experiments without destroying the embryos.

The Rabb memo also ignores the policy reflected in current law on fetal tissue transplantation research using tissue from intentionally aborted children. While that law is itself open to criticism, it at least bans the use of fetal tissue in federally funded research if abortion was induced for the purpose of providing the tissue. Under current law, federal funds may not be used for fetal tissue transplantation experiments following an abortion if the timing and method of the abortion were altered solely for the purpose of providing usable tissue for research. Yet, in the embryonic stem cell research which NIH proposes to fund, the timing, method and procedures for destroying the embryonic child would be determined solely by the federally funded researcher's need for usable stem cells.

Finally, both Ms. Rabb's memorandum and Dr. Varmus's testimony before a Senate subcommittee present a new definition of "human embryo" that would undermine both the congressional rider on embryo research, and the President's own 1994 directive against using federal funds to create human embryos for research purposes. They now say that an entity is an "embryo" only if one can show that it is capable, if implanted in the womb, of becoming a born "human being." This narrow definition has no support whatsoever in federal law.

²When a law has two parallel clauses, one of which is deliberately written in broader terms than the other, it may not be interpreted to have the same meaning as the narrower clause. See *Russello v. United States*, 464 U.S. 16, 23 (1983), and cases cited therein.

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Nevertheless, researchers are already offering to use damaged human embryos in their destructive research, or even to engineer lethal defects in advance into the embryos they create for such research, in order to take advantage of this Administration cover and ignore the congressional and presidential directives altogether.

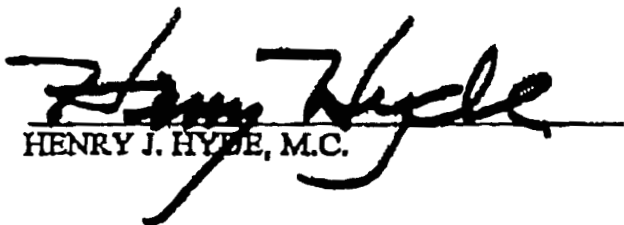
For more than 20 years, Federal laws and regulations have protected the human embryo and fetus from harmful experimentation at the hands of the Federal government — regardless of whether the embryo is “perfect” or damaged, wanted or unwanted, intended for abortion or intended for live birth. This area of law has provided a bulwark against government’s misuse and exploitation of human beings in the name of medical progress. It would be a travesty for this Administration to attempt to unravel this accepted ethical standard.

We urge you to review this issue carefully, and to put a stop to a proceeding which so clearly does violence to the meaning and intent of Federal law.

Sincerely,

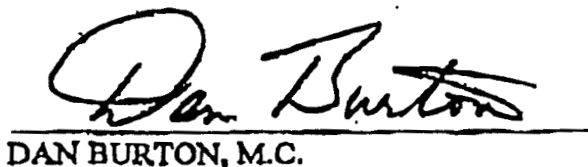

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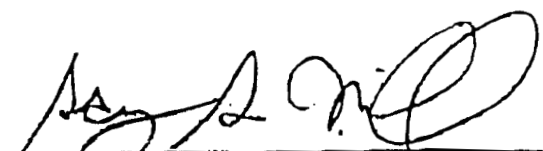

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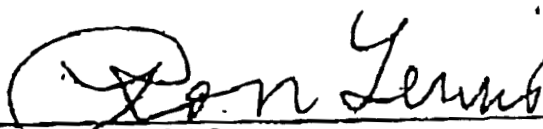

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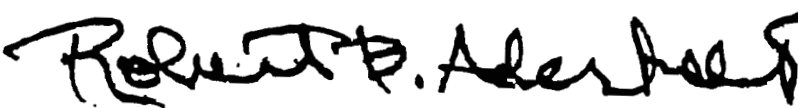
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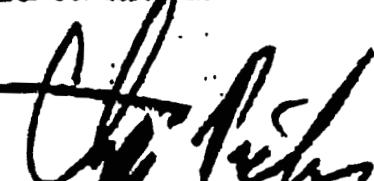

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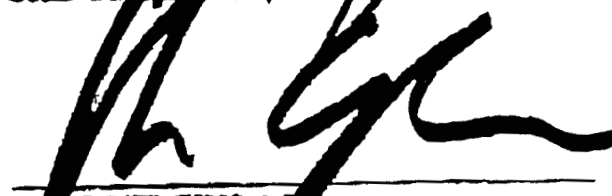

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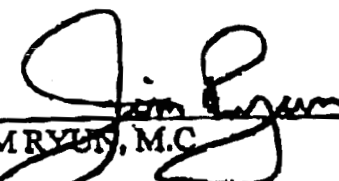

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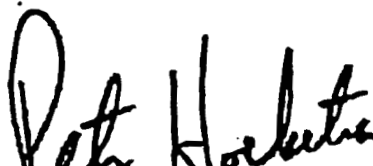

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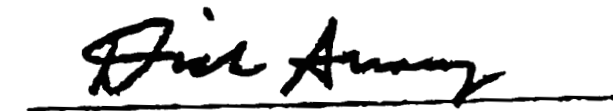

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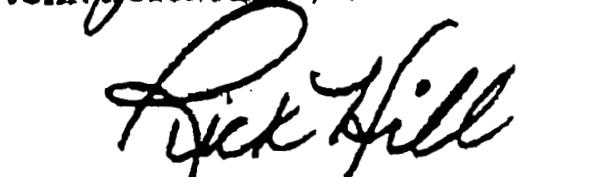

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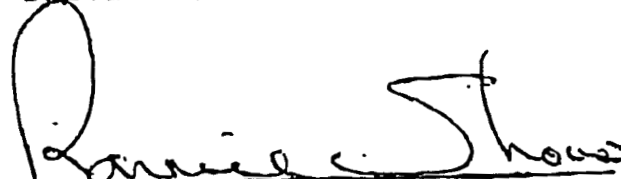

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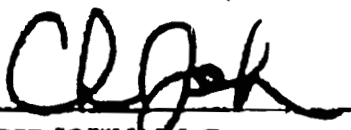

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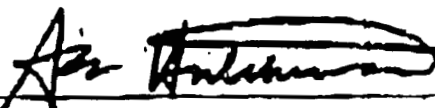

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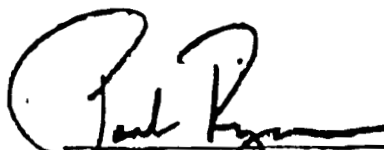
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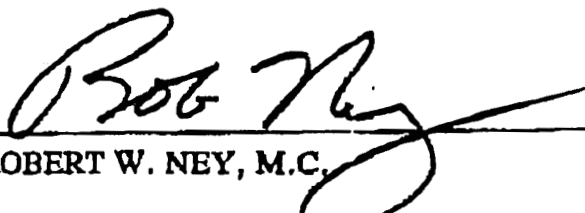

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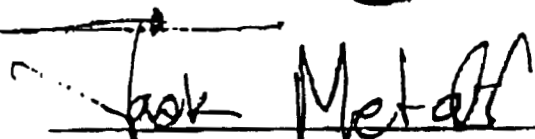

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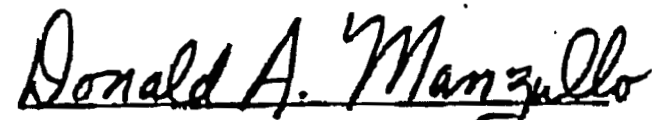

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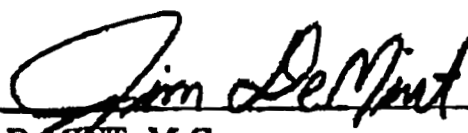

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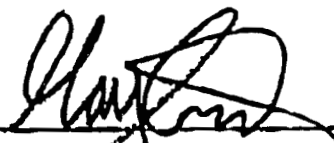

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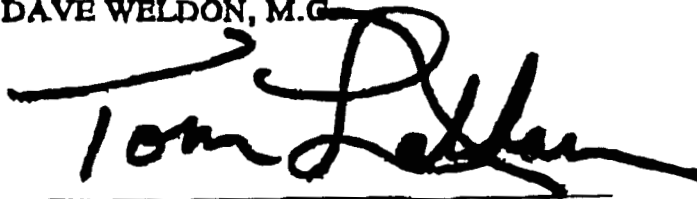

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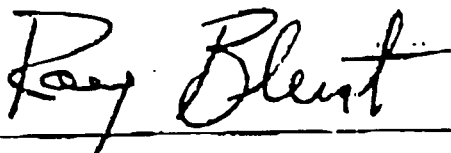

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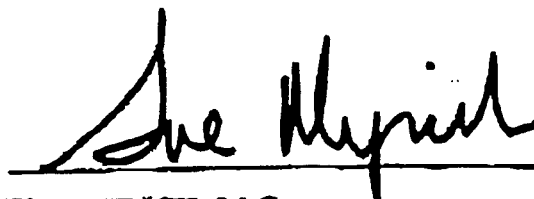

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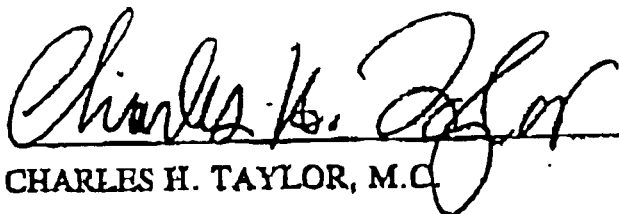
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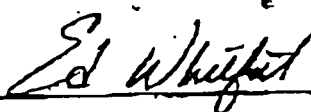
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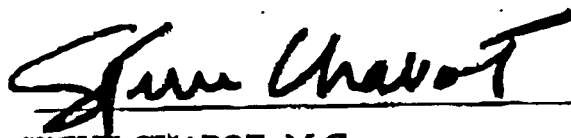
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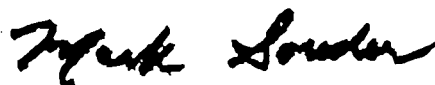
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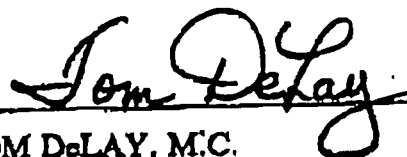
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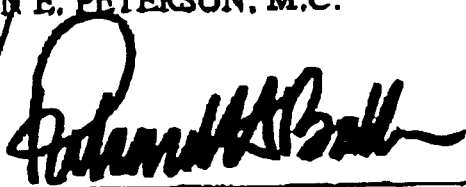
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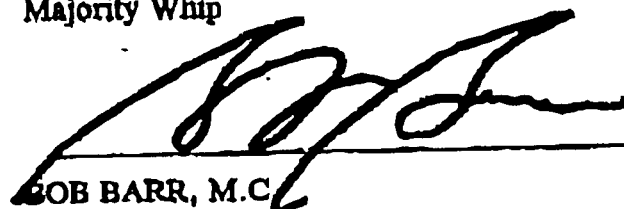
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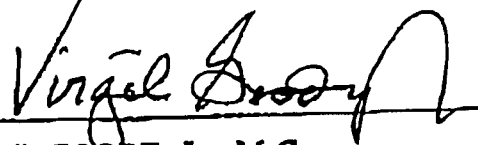
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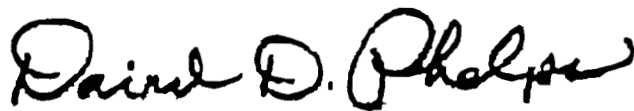


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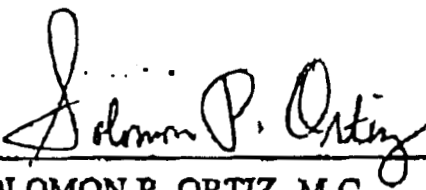
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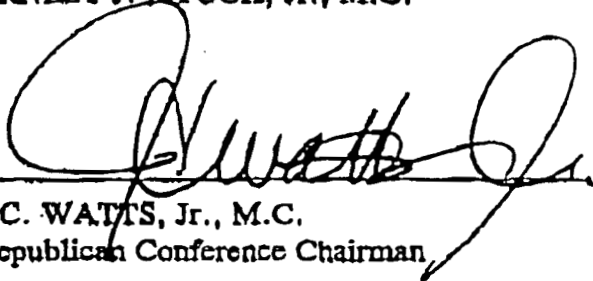
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